

CITY OF NEWPORT BEACH
Planning Commission Minutes
December 09, 2010
Regular Meeting – 6:30 p.m.

ROLL CALL:		
Commissioners Eaton, Unsworth, Hawkins, McDaniel, Toerge, Ameri, and Hillgren - all present.		
STAFF PRESENT:		
James Campbell, Acting Planning Director Patrick Alford, Planning Manager Leonie Mulvihill, Assistant City Attorney Gregg Ramirez, Senior Planner Makana Nova, Assistant Planner Fern Nueno, Assistant Planner Marlene Burns, Administrative Assistant Ruby Garciamay, Department Assistant		
POSTING OF THE AGENDA:		
The Planning Commission Agenda was posted on December 2, 2010.		
PUBLIC COMMENTS:		
T.K Brimer, Owner of the Frog House in Newport Beach, wanted to introduce himself to the Planning Commissioners. Mr. Brimer informed the Commission that he had filed for a Zoning Change and stated that he would follow-up with the Planning Department as to the status of the application. Commissioner Hawkins announced that Speak Up Newport will have its Annual Mayor's Dinner, and that the event is scheduled for February 11, 2011. Commissioner Hawkins added that he was honored for his nomination and election as President of Speak Up Newport.		
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REQUEST FOR CONTINUANCES:		None
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CONSENT ITEMS		
SUBJECT: MINUTES of the regular meeting of November 18, 2010. Motion made by Commissioner Hawkins and seconded by Commissioner Unsworth to approve the minutes as corrected. Motion carried with the following vote:		ITEM NO. 1 Approved
Ayes: Noes:	Eaton, Unsworth, Hawkins, McDaniel, Ameri, Hillgren, and Toerge None	
* * *		
PUBLIC HEARING ITEMS		
SUBJECT: The Landing Parking Management – (PA2010-166) 3101-3121 Newport Boulevard, 3100-3138 Balboa Boulevard A use permit to waive three additional parking spaces for a total of eight of the required 243 parking spaces. The waiver would allow three outdoor dining patios in conjunction with eating and drinking establishments in the shopping center.		ITEM NO. 2 PA2010-166 Denied, later Approved*

Makana Nova, Assistant Planner, gave a brief overview of the staff report with a PowerPoint presentation and responded to the Commission's questions and discussion regarding the following topics:

- Filing status of the application for Gina's Pizza.
- Rights to the parking spaces adjacent to Malarky's.
- Location of parking spaces designated for employees.
- Methodology of parking study and whether it included the parking spaces adjacent to Malarky's.
- Truck delivery route, ingress and egress established by the original use permit approval.
- Impact of table and seating in relation to the parking requirements.
- Methodology floor area calculations.
- Intensities and use of restaurants.
- Pedestrian volume.
- Security guard involvement.
- Possibility of a modification to a condition of a previously approved project.
- Location of bike racks.

Applicant Sean Whiskeman, Vice President of Retail Operations for Catellus Development Group, elaborated on the topics identified during the staff presentation and the subsequent Commission discussion.

Public comment period was opened.

Comments were given by the following residents from the surrounding neighborhood:

Joe Reiss - 30th Street

George Schroeder - 35th Street

Dan Purcell - Corona del Mar resident

- Truck delivery route should not be changed.
- Impact on the expansion of patio area.
- Impact of alcohol consumption.
- Hours of operation.
- Parking study was old; foresee parking issues in the future.
- Parking spaces are eight and not three.
- Negative impact for the residents in the area.
- Appreciation for consideration of bicycle racks in the discussion.

Public comment period was closed.

Commissioner Eaton stated that the middle sentence in F-3 from the Resolution should be deleted. Acting Planning Director, James Campbell, responded and concluded that the sentence should be changed to reflect that excess space will be deducted from the 15 percent.

Motion made by Commissioner Toerge and seconded by Commissioner Hillgren to adopt the Resolution approving Amendment No. 1 to Use Permit No. UP2010-002 with the following modifications to the resolution:

- Modify Facts in Support of Finding No. F-3 to read, *"The three parking spaces required for outdoor patios area in excess of 25 percent of the interior net public area (586 square feet) are waived. The patio floor area in excess of the 25 percent allowance will be deducted from the 15 percent of gross floor area limitation for eating and drinking establishment uses. This will help ensure*

that parking demand is similar to what was concluded in the parking study.”

- Modify Conditions of Approval No. 4, to read, *“The three parking spaces required for outdoor patio areas in excess of 25 percent of the interior net public area (586 square feet) are waived. The patio floor area in excess of the 25 percent allowance will be deducted from the 15 percent of gross floor area limitation for eating and drinking establishment uses.”*

General discussion of the motion ensued.

Commissioner Hawkins added the following modifications:

- Modify Facts in Support of Finding E-1 to read, *“The three space parking waiver for the proposed outdoor dining patios would not be detrimental to the harmonious and orderly growth of the City and will contribute rather than hinder public convenience. The three space parking waiver for the outdoor patios does not jeopardize the health, interest, safety, or general welfare of residents in the vicinity.”*
- Modify Facts in Support of the Finding B-3 to read, *“The project includes conditions of approval to ensure the welfare of the surrounding community. All eating and drinking establishments will be required to obtain separate use permits. Any separate discretionary approvals will regulate the operation of the specific use within the project site. Nothing in this resolution and or conditions ensures any square footage for outdoor dining for any restaurant use or application.”*
- Addition of the following Condition of Approval to read, *“All eating and drinking establishments will be required to obtain separate use permits. Any separate discretionary approvals will regulate the operation of the specific use within the project site. Nothing in this resolution and or conditions ensures any square footage for any restaurant use or application”.*

Commissioner Unsworth included the following modification:

- Addition of the following Condition of Approval to read, *“The maximum allowable square footage for eating and drinking establishments shall be 15 percent of 47,878 square feet (7,182 square feet).”*

Maker of the motion, Commissioner Toerge, agreed to the additional modifications.

Motion failed with the following vote: (*Please note that Item No. 2 was reconsidered and ultimately approved later in the evening).

Ayes:	Toerge, Eaton, and Hillgren
Noes:	Unsworth, Hawkins, McDaniel, and Ameri

* * *

SUBJECT: Chipotle Mexican Grill – (PA2010-096)
3101 Newport Boulevard

A use permit and accessory outdoor dining permit to allow a take-out service eating and drinking establishment with a Type 41 (On Sale Beer and Wine, Eating Place) Alcoholic Beverage Control (ABC) license and an outdoor patio. The project is located in the Landing Shopping Center (formerly Albertson's).

Applicant Rob Lucio, Real Estate Manager of Chipotle Mexican Grill, responded to the Commission's questions.

Motion made by Commissioner McDaniel and consented by all Commissioners to

ITEM NO. 3
PA2010-096
Tabled

<p>table Item No. 3 to be heard as the last item per recommendation from James Campbell, Acting Planning Director.</p> <p>Chairman McDaniel recessed the meeting at 9:22 p.m. and reconvened the meeting at 9:33 p.m. with all members of the Commission in attendance.</p> <p>Motion carried without any vote.</p>		
<p>Ayes:</p> <p>Noes:</p>		
* * *		
<p>SUBJECT: McLaren Newport Beach – (PA2010-165) 2540-2542 West Coast Highway</p> <p>A conditional use permit to allow an automobile dealership (Vehicle Sales) in an existing commercial building. The proposed use would be limited to sales of vehicles only, with the inventory, storage, maintenance, and repair of vehicles conducted off-site.</p> <p>Patrick Alford, Planning Manager, addressed questions regarding the project.</p> <p>The Commission asked questions concerning the following:</p> <ul style="list-style-type: none"> • Street closure for transport of vehicles to and from the showroom. • Hours of operation. • Beer and wine availability. • Interior remodel and exterior improvements. • Signage on the building. • Newly adopted Zoning Code applicable. <p>The Applicant, David McCullagh, responded to the Commission's questions.</p> <p>Public comment period was opened.</p> <p>No public comments.</p> <p>Public comment period was closed.</p> <p>Motion made by Commissioner Hawkins and seconded by Commissioner Ameri to move for approval, including the addition of Condition 17A in the Exhibit "A" of the Resolution, requiring the point of sales for McLaren to be Newport Beach.</p> <p>Motion carried with the following vote:</p>		<p>ITEM NO. 4 PA2010-165 Approved</p>
<p>Ayes:</p> <p>Noes:</p>	<p>Unsworth, Hawkins, McDaniel, Ameri, Toerge, Eaton, and Hillgren</p> <p>None</p>	
* * *		
<p>SUBJECT: Rose Bakery Café Management Plan – (PA2010-103) 3536 East Coast Highway</p> <p>An amendment to Use Permit No. UP2009-035 to waive 15 parking spaces required by the previously approved expansion of the restaurant. The applicant also requests a change in the hours of operation from 5:00 a.m. – 7:00 p.m. to 5:00 a.m. – 8:00 p.m.</p> <p>Fern Nueno, Assistant Planner, gave a brief overview of the staff report.</p> <p>The Commission asked questions concerning the following:</p>		<p>ITEM NO. 5 PA2010-103 Approved</p>

- Change to title and recordation regarding the Off-Site Parking Agreement.
- Day-time parking consent from Landmark Steakhouse Restaurant.
- Hours of operation.

Ms. Nueno and Dennis O'Neil, who represented the Owners of Rose Bakery Café, responded to the questions from the Commission.

Public comment period was opened.

Comments were given by the following residents from the surrounding neighborhood:

Eveline Dennis – 345 University Drive, Costa Mesa
 Steven Fischer – 510 Poinsettia Avenue, Corona Del Mar
 Richard Nichols – 519 Iris, Corona Del Mar
 Paul Deem – 1305 Circle Way
 Ernest G. Johanson – 34 Tinior Sea, Newport Beach
 Steve Berede – 376 Magnolia Drive

- Friendly environment.
- High caliber of service from staff.
- Parking lot issue at the bank on 3600 Coast Highway.
- No problems with parking.
- Parking lot studies.
- Allegation that the Applicants had been discriminated against.

Commissioner Hawkins, in response to the allegation by Dr. Nichols, stated that these were serious allegations and asked that the staff respond. City Attorney, Leonie Mulvihill, disagreed there had been any discrimination in the handling of the Application. Acting Planning Director, James Campbell, stated that there was no discrimination; however, there was a Code Enforcement issue and the process was followed correctly. Mr. O'Neil represented that, on behalf of his clients, there had not been any discrimination.

Public comment period was closed.

Motion made by Commissioner Toerge and seconded by Commissioner Hillgren to adopt a resolution approving Amendment No. 1 to Use Permit No. UP2009-035 subject to the conditions attached in the Draft Resolution.

Motion carried with the following vote:

Ayes:	Unsworth, McDaniel, Ameri Toerge, Eaton, and Hillgren
Noes:	Hawkins

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SUBJECT: Chipotle Mexican Grill – (PA2010-096)
 3101 Newport Boulevard

A use permit and accessory outdoor dining permit to allow a take-out service eating and drinking establishment with a Type 41 (On Sale Beer and Wine, Eating Place) Alcoholic Beverage Control (ABC) license and an outdoor patio. The project is located in the Landing Shopping Center (formerly Albertson's).

Motion made by Commissioner Unsworth and seconded by Commissioner Toerge to further table Item No. 3 so that a motion for reconsideration can be made on Item No. 2.

Motion carried with the following vote:

ITEM NO. 3
PA2010-096
Tabled

Ayes:	Unsworth, McDaniel, Ameri, Toerge, Eaton, and Hillgren	
Noes:	Hawkins	
* * *		
Motion made by Commissioner Ameri and seconded by Commissioner Toerge to reconsider Item No. 2, The Landing Parking Management Program (PA2010-166). Motion carried with the following vote:		Approved
Ayes:	Unsworth, Ameri, Toerge, Eaton, and Hillgren	
Noes:	Hawkins and McDaniel	
* * *		
SUBJECT: The Landing Parking Management – (PA2010-166) 3101-3121 Newport Boulevard, 3100-3138 Balboa Boulevard A use permit to waive three additional parking spaces for a total of eight of the required 243 parking spaces. The waiver would allow three outdoor dining patios in conjunction with eating and drinking establishments in the shopping center. Motion made by Commissioner Toerge and seconded by Commissioner Hillgren to adopt the Resolution approving Amendment No. 1 to Use Permit No. UP2010-002 with the following modifications to the resolution: <ul style="list-style-type: none"> • Modify Facts in Support of Finding No. F-3 to read, <i>“The three parking spaces required for outdoor patios area in excess of 25 percent of the interior net public area (586 square feet) are waived. The patio floor area in excess of the 25 percent allowance will be deducted from the 15 percent of gross floor area limitation for eating and drinking establishment uses. This will help ensure that parking demand is similar to what was concluded in the parking study.”</i> • Modify Conditions of Approval No. 4, to read, <i>“The three parking spaces required for outdoor patio areas in excess of 25 percent of the interior net public area (586 square feet) are waived. The patio floor area in excess of the 25 percent allowance will be deducted from the 15 percent of gross floor area limitation for eating and drinking establishment uses.”</i> General discussion of the motion ensued. Commissioner Hawkins added the following modifications: <ul style="list-style-type: none"> • Modify Facts in Support of Finding E-1 to read, <i>“The three space parking waiver for the proposed outdoor dining patios would not be detrimental to the harmonious and orderly growth of the City and will contribute rather than hinder public convenience. The three space parking waiver for the outdoor patios does not jeopardize the health, interest, safety, or general welfare of residents in the vicinity.”</i> • Modify Facts in Support of the Finding B-3 to read, <i>“The project includes conditions of approval to ensure the welfare of the surrounding community. All eating and drinking establishments will be required to obtain separate use permits. Any separate discretionary approvals will regulate the operation of the specific use within the project site. Nothing in this resolution and or conditions ensures any square footage for outdoor dining for any restaurant use or application.”</i> • Addition of the following Condition of Approval to read, <i>“All eating and drinking establishments will be required to obtain separate use permits. Any separate discretionary approvals will regulate the operation of the specific use within the</i> 		ITEM NO. 2 Reconsidered PA2010-166 Approved

<p><i>project site. Nothing in this resolution and or conditions ensures any square footage for any restaurant use or application”.</i></p> <p>Commissioner Unsworth included the following modification:</p> <ul style="list-style-type: none"> • Addition of the following Condition of Approval to read, <i>“The maximum allowable square footage for eating and drinking establishments shall be 15 percent of 47,878 square feet (7,182 square feet).”</i> <p>Maker of the motion, Commissioner Toerge, agreed to the additional modifications.</p> <p>Motion carried with the following vote:</p>		
Ayes:	Hillgren, Ameri , Eaton, and Toerge	
Noes:	Unsworth, Hawkins, and McDaniel	
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<p>Motion made by Commissioner Hawkins and seconded by Commissioner Hillgren to allow the meeting to continue, as it was 11:00 p. m.</p>		Approved
Ayes:	Eaton, Unsworth, Hawkins, McDaniel, Ameri, Hillgren and Toerge	
Noes:	None	
* * *		
<p>SUBJECT: Chipotle Mexican Grill – (PA2010-096) 3101 Newport Boulevard</p> <p>A use permit and accessory outdoor dining permit to allow a take-out service eating and drinking establishment with a Type 41 (On Sale Beer and Wine, Eating Place) Alcoholic Beverage Control (ABC) license and an outdoor patio. The project is located in the Landing Shopping Center (formerly Albertson's).</p> <p>Motion made by Commissioner Toerge and seconded by Commissioner Ameri to adopt the Resolution approving Use Permit No. UP2010-017 for an eating and drinking establishment with a Type 41 (On Sale Beer and Wine, Eating Place) Accessory Outdoor Dining Permit No. OD2010-004 for the outdoor patio subject to the findings and conditions in the attached draft resolution (Attachment No. PC 1).</p> <p>A general discussion ensued.</p> <p>Applicant was asked to address questions posed by the Commission regarding the outdoor patio.</p> <p>Public comment period was opened.</p> <p>Dan Purcell, Corona Del Mar resident expressed his concern with the dumpster for parking arrangement.</p> <p>Public comment period was closed.</p> <p>Commissioner Unsworth added the following modifications for the Resolution as follows:</p> <ul style="list-style-type: none"> • Modify Facts In Support of Finding No. C-1 to read as follows, <i>“In accordance with the provisions of Chapter 20.82 of the Newport Beach Municipal Code, accessory outdoor dining requires no additional parking if it is less than 25 percent of the interior net public area. The additional 211 square feet of outdoor dining area has been deducted from the 15 percent gross floor area limitation for eating and drinking establishment uses.”</i> 		<p>ITEM NO. 3 PA2010-096 Approved</p>

<ul style="list-style-type: none"> Modify Condition of Approval No. 13 to read as follows, <i>“The patio floor area in excess of the 25 percent allowance will be deducted from the 15 percent of gross floor area limitation for eating and drinking establishment uses.”</i> Modify Condition of Approval No. 15 to read as follows, <i>“The type of alcoholic beverage license issued by the California Board of Alcoholic Beverage Control shall be a Type 41 in conjunction with the service of food as the principal use of the facility.”</i> <p>Maker of motion, Commissioner Toerge, agreed to the additional modifications.</p> <p>Motion carried with the following vote:</p>		
Ayes:	Eaton, Unsworth, Hawkins, McDaniel, Ameri, Hillgren and Toerge	
Noes:	None	
* * *		
STAFF AND COMMISSIONER ITEMS		
No presentation given for the New City Hall.		ITEM NO. 6
Planning Director's report:		ITEM NO. 7
<ul style="list-style-type: none"> Would like to have the January 6, 2011 Planning Commission Meeting canceled. 		
Planning Commission reports:		ITEM NO. 8
<ul style="list-style-type: none"> Planning Commission Holiday Gathering at the Regatta Café scheduled for December 21, 2010 at 6:30 p.m. 		
For a future agenda, Commissioner Hawkins would like to request that staff discuss when it is appropriate to make or recommend a change to the municipal code in connection with in lieu parking.		ITEM NO. 9
Requests for excused absences – None		ITEM NO. 10
<p>ADJOURNMENT: 11:17 p.m. MICHAEL TOERGE, SECRETARY CITY OF NEWPORT BEACH PLANNING COMMISSION</p>		